NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
The Voice of Rural Telecommunications
www.ntca.org

September 18, 2008

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW, TW-A325
Washington, D.C. 20554

***Ex Parte* Notice: *In the Matter of Developing a Unified Intercarrier Compensation Regime,* CC Docket No. 01-92; and *IP-Enabled Services,* WC Docket 04-36.**

Dear Ms. Dortch:

On Tuesday, September 16, 2008, Ken Pfister with Great Plains Communications, Inc., Wendy Fast with Consolidated Companies, Cheryl Parrino with Parrino Strategic Consulting Group (PSCG), and Scott Reiter and Daniel Mitchell with the National Telecommunications Cooperative Association (NTCA), met with the staff of the FCC's Wireline Competition Bureau, which included Don Stockdale, Al Lewis, Alex Minard, Marcus Maher, Nicholas A. Degani, Claude Aiken, Randy Clarke, Lynne Engledow, Rebekah Goodheart, Ted Burmeister, Katie King, Matt Warner, and Lisa Gelb to discuss issues raised in the above referenced dockets. Specifically we discussed the August 6, 2008 inter-carrier compensation proposal submitted by a coalition, which includes AT&T, Verizon and others, and the follow-up filing of AT&T and Verizon on September 12, 2008, urging the Federal Communications Commission (FCC or Commission) to establish a mandatory unified $0.0007 terminating access rate[1] for all price cap and rate-of-return (RoR) carriers. The proposal further states that the Commission should apply the proposed universal $0.0007 terminating access rate to all traffic, to all carriers, and in all jurisdictions. We briefed the FCC staff first on the financial impact the proposal would have on rural consumers, RoR carriers, and broadband deployment and then on the legal impediments face by Verizon and AT&T in attempting to apply a mandatory unified $0.0007 terminating access rate to all traffic, to all carriers, in all jurisdictions, which include:

1. Unlawful Preemption of State Jurisdiction under Section 2 of the Communications Act of 1934, as Amended (Act) (47 U.S.C. Section 152),

2. Violation of the State and Federal Separations Requirements under Section 410 of the Act (47 U.S.C. Section 410),

3. Violation of the Regulatory Compact under RoR Ratemaking - FCC and State Commissions have approved RoR Rural LEC access costs and rates as just, reasonable and prudent,

4. Unlawful Takings under the 5th Amendment of the United States Constitution, Confiscation of rural RoR carrier property, and

5. Fails to consider and recognize that separate rules and rates should apply to small rural RoR carriers in accordance with the Regulatory Flexibility Act, 5 U.S.C. Sections 601 - 612.

[1] In discussions with the coalition sponsors, NTCA learned that the $0.0007 terminating rate was for switching only and does not include compensation for terminating transport.

NTCA[2] specifically urged that the Commission reject the proposed unified $0.0007 terminating access rate because it will significantly harm rural consumers, unlawfully preempt the states, and result in an unlawful taking of RoR carrier property. Unlike price cap carriers whose switched access, transport and transiting rates are non-cost-based, RoR carrier switched access, transiting, and transport rates are cost-based and are approved by the FCC and state commissions and allocated to the interstate and intrastate jurisdictions under the FCC's federal/state separations rules pursuant to Sections 2 and 410 of Act. The proposed unification of all terminating interstate, intrastate, and local/reciprocal compensation access rates to a ***non-cost-based rate of $0.0007*** per minute for RoR carriers, therefore, would violate federal and state approved cost-based rate-of-return ratemaking and separations requirements under Section 410 of the Act, violate the States authority to set intrastate rates under Section 2 of the Act, and violate the takings clause in the 5th Amendment of the United States Constitution. The coalition proposal would be extremely harmful to rural consumers served by RoR carriers.

We urged the Commission to reject the coalition proposal and instead adopt the following NTCA proposed measures for RoR carriers which will safeguard rural consumers from significant rate increases, allow for a lawful and orderly transition to comprehensive inter-carrier compensation (IC) and universal service fund (USF) reform, and create the proper incentives and regulatory environment for carriers to invest in broadband in rural, high-cost areas throughout the United States.[3]

1. **For RoR carriers, the Commission should cap *interstate* access rates at their current cost-based levels in accordance the *NTCA Interim USF & IC Reform Proposal filed with the FCC on July 11, 2008.*[4] RoR carrier *intrastate* access, reciprocal compensation, transiting, and transport rates should remain unchanged, unless separations changes are adopted by the Commission to reflect the proper reallocation of intrastate costs to the interstate jurisdiction. Unlike the coalition proposal, the NTCA plan does not preempt state jurisdiction to establish intrastate access rates under Section 2 of the Act (47 U.S.C. §152), and maintains RoR carrier cost-based access rates which prevent an unlawful taking of RoR carrier property**.[5]

[2] NTCA is a premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents 585 rural rate-of-return regulated telecommunications providers. All of NTCA's members are full service rural local exchange carriers (rural LECs) and many of its members provide wireless, cable, Internet, satellite and long distance services to their communities. Each member is a "rural telephone company" as defined in the Communications Act of 1934, as amended (Act). NTCA's members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

[3] The FCC does not have statutory authority to mandate the price of intrastate access charges and local reciprocal compensation rates. The States have been given the explicit statutory authority to set intrastate rates under Section 2 of the Act. NTCA supports the voluntary reduction of state access rates by state commissions so long as RoR carriers receive revenue neutral access replacement universal service support, after applying a federal local rate benchmark, to offset access revenue losses as a result of intrastate access rate reductions in order to continue to deploy, maintain, and operate their voice and broadband networks.

[4] *See, NTCA Interim USF & IC Reform Plan,* filed on July, 11, 2008, in CC Docket No. 96-45, CC Docket No. 01-92, and WC Docket No. 05-337. The NTCA Interim USF & IC Reform Plan does not address intrastate access because of the jurisdictional issues that would be presented.

[5] See, *Covington & L Turnpike Road Co. v. Sandford*, 164 U.S. 578, 597 (1896), *Bluefield Water Works v. Public Service Commission* 262 U.S. 679 (1923), *Smith v. Illinois*, 282 U.S. 133, 51 S. Ct. 65 (1930), *Federal Power Commission v. Natural Gas*

NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
4121 Wilson Boulevard • Tenth Floor • Arlington, Virginia 22203
Phone/703.351.2000 • Fax/703.351.2001 • www.ntca.org

The Commission has recognized the unique characteristics of rural RoR carriers, their dependence on access charge revenues, and the need to preserve universal service in the *MAG Order*, stating that "Our examination of the record reveals that rate-of-return carriers generally are more dependent on their interstate access charge revenue streams and universal service support than price cap carriers and, therefore, more sensitive to disruption of those streams. . . . . The approach that we adopt will provide these carriers with certainty and stability by ensuring that the access charge reforms we adopt do not affect this important revenue stream."[6] The Commission and the Joint Board have recognized that RoR regulation along with the universal service fund have worked well in rural areas, not only for providing quality service at reasonable rates but also for deploying broadband in rural areas.[7]

NTCA's proposed cap on RoR carrier interstate switched access rates will ensure that RoR carrier rates do not continue to increase, which will benefit multiple parties.[8] Interexchange carriers (IXCs), such as AT&T and Verizon, and interconnected voice over Internet Protocol (VoIP) providers, will benefit significantly by paying lower access charges than they otherwise would if RoR carrier access charges were not capped. Since IXCs can pass on access costs in their retail long-distance rates to consumers, consumers may also benefit by paying lower retail long-distance rates, assuming AT&T, Verizon, and other IXCs pass these savings to their customers. More importantly, rural consumers served by RoR carrier will continue to receive the high-quality service and will benefit by rural RoR carriers' continued investment in broadband infrastructure.

Unlike the coalition proposal, NTCA's proposal does not unlawfully preempt the states. The Supreme Court recognized the important role states play to avoid issues of preemption and confiscation. The Court stated that, "proper regulation of rates can be had only by maintaining the limits of state and federal jurisdiction."[9] Congress obviously intended that state and federal representatives work together, make compromises and negotiate something that would work for both the federal government and the states. The application of the coalition mandatory $0.0007 proposal to RoR carriers would undermine Congress's intent to have the FCC work with the states to determine the proper allocation of access costs between the federal and state jurisdictions.

Pipeline Co., 315 U.S. 575, 585 (1942), *Federal Power Commission, et al. v. Hope Natural Gas Co., et al.*, 320 U.S. 591 (1944), *Federal Power Commission v. Texaco, Inc.*, 417 U.S. 380, 391-92 (1974), and *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 307-308 (1989).

[6] *See In the Matter of Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers, Second Order and Further Notice of Proposed Rulemaking*, FCC Docket No. 01-304, (rel. October 11, 2001) ("*MAG Order*"),¶ 131.

[7] *MAG Order*, ¶ 224 and *See In the Matter of High-Cost Universal Service Support, Federal-State Joint Board on Universal Service Recommended Decision*, WC Docket No. 05-337, CC Docket No. 96-45, FCC 07J-4, released November 20, 2007 ("Federal-State Joint Board Recommended Decision"), ¶¶ 30 and 39.

[8] As a point of clarification in the NTCA interim proposal, for the National Exchange Carrier Association (NECA) pool, the cap would reflect the composite pool average switched access rate level. NECA would continue to have the ability to assign pool study areas to rate bands as it does currently.

[9] *Smith v. Illinois*, 282 U.S. 133, 51 S. Ct. 65 (1930).

Moreover, utilities, such as RoR carriers, are protected from the unlawful taking of their property by the 5th Amendment of the United States Constitution.[10] This protection extends to a prohibition on the setting of confiscatory rates that result in a taking of property. The Commission has consistently recognized its statutory responsibility and has regulated in a manner that allows RoR carriers to recover their costs along with a reasonable return on investment.[11] The Commission has also recognized the unique characteristics of rural RoR carriers and the unique challenges they face in providing quality service to their customers.[12]

Pursuant to the 5th Amendment,[13] Sections 201 and 254 of the Act, and existing regulatory precedent,[14] the Commission has a legal responsibility to provide rates and a rate structure for rural RoR carriers that does not result in a confiscatory taking and will provide an opportunity to recover costs as well as earn a reasonable return on those investments made to provide service.[15] The Commission has previously recognized this responsibility, specifically stating that "[r]ate-of-return carriers charge rates that are designed to provide the revenue required to cover costs and to achieve a prescribed return on investment."[16] In exchange for a reasonable opportunity to recover costs including a reasonable return, RoR carriers have provided quality service at rates reasonably comparable to those in urban areas to **all** rural consumers in the areas they serve, and have fulfilled all carrier of last resort (COLR) obligations.[17] NTCA therefore urges the Commission to reject the coalition proposal and adopt the measures proposed by NTCA which allow the FCC to achieve its statutory goals and avoid violating federal and state approved cost-based rate-of-return

[10] Courts have long evaluated utility rates against the back drop of the requirements of the Constitution and confiscatory rates, i.e., *Bluefield Water Works v. Public Service Commission* 262 U.S. 679 (1923) and *Federal Power Commission, et al. v. Hope Natural Gas Co., et al.,* 320 U.S. 591 (1944). It is clear that "[t]he Constitution protects utilities from being limited to a charge for their property serving the public which is so 'unjust' as to be confiscatory." *Duquesne Light Co. v. Barasch,* 488 U.S. 299, 307-308 (1989) (citing *Covington & L Turnpike Road Co. v. Sandford*, 164 U.S. 578, 597 (1896) (A rate is too low if it is "so unjust as to destroy the value of [the] property for all the purposes for which it was acquired," and in so doing "practically deprive[s] the owner of property without due process of law"); *Federal Power Commission v. Natural Gas Pipeline Co.*, 315 U.S. 575, 585 (1942) (summary omitted.); *Federal Power Commission v. Texaco, Inc.*, 417 U.S. 380, 391-92 (1974)) (summary omitted).

[11] *See In the Matter of Federal State Joint Board on Universal Service, CC Docket No. 96-45, FCC 01-157, Fourteenth Report & Order*, (May 23, 2001) ("*RTF Order*"), ¶¶ 24 and 25, and *See MAG Order*, ¶¶ 3, 12, 131, 132, and 134.

[12] *RTF Order*, ¶¶ 24, 25, and 79, and *MAG Order*, ¶¶ 3, 12, 131, 132, and 134.

[13] United States Constitution, Amendment V.

[14] *RTF Order*, ¶¶ 24 and 25. See also, *MAG Order*, ¶¶ 3, 12, 131, 132, and 134.

[15] See *F.C.C. v. Florida Power Corp*. 480 U.S. 245, 253-254 (1987).

[16] *MAG Order*, ¶19.

[17] See, discussion of *Federal Power Commission v. Hope Natural Gas*, 320 U.S. 591 (1944) in Duquesne at 310. "Today we reaffirm these teachings of Hope Natural Gas: "[I]t is not theory but the impact of the rate order which counts. If the total effect of the rate order cannot be said to be unreasonable, judicial inquiry ... is at an end. The fact that the method employed to reach that result may contain infirmities is not then important." Id., at 602, 64 S.Ct., at 288. This language, of course, does not dispense with all of the constitutional difficulties when a utility raises a claim that the rate which it is permitted to charge is so low as to be confiscatory: whether a particular rate is "unjust" or "unreasonable" will depend to some extent on what is a fair rate of return given the risks under a particular rate-setting system, and on the amount of capital upon which the investors are entitled to earn that return. At the margins, these questions have constitutional overtones."

NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
4121 Wilson Boulevard • Tenth Floor • Arlington, Virginia 22203
Phone/703.351.2000 • Fax/703.351.2001 • www.ntca.org

ratemaking requirements, the States' authority to set intrastate rates under Section 2 of the Act, and the takings clause in the 5th Amendment of the United States Constitution.

2. **Any interstate access costs not recovered as a result of capping RoR carrier interstate access rates should be recovered through Interstate Common Line Support (ICLS) after applying a federal local benchmark, as conceptually defined in the *Missoula Plan Addendum* in CC Docket 01-92, filed on February 20, 2007. The federal local rate benchmark would include the RoR carrier's basic local voice rate, federal subscriber line charge (SLC), and the State's per-line USF monthly assessment. Such a federal benchmark could be imputed.**

NTCA's proposal to recover residual access costs resulting from the capping of interstate RoR carrier access rates at their current cost-based levels from the ICLS after applying a federal local benchmark for RoR carriers is sound public policy, which builds on the record established in the Commission's *MAG Order.*[18] Since supplemental support in the NTCA proposal is limited solely to RoR carriers, which represent a small portion of the nation's access lines relative to price cap carriers, such a change will not result in large increases in the USF. Indeed, recently in its *CETC Cap Order*, the Commission observed that ICLS for RoR carriers has been stable in recent years.[19] Thus, the stability in the size of ICLS for incumbent LECs that the Commission anticipated seven years ago in the *MAG Order* has occurred. This stability should continue under the adoption of the NTCA Interim USF & IC Reform Proposal.

3. **Any access replacement support received by a price cap carrier should be offset by access expense savings the carrier's long-distance affiliate receives.**[20]

The cost reductions through lower terminating access rates paid by price cap carriers through their long-distance affiliates should be used to offset any access replacement support received by price cap carriers. Price-cap carriers, such as AT&T and Verizon, should not receive windfalls as a result of access rate changes. Furthermore, the impact of intercarrier compensation reform on the size of the universal service fund should be as minimal as possible, as would be accomplished by accounting for the access savings realized by these companies.

4. **If the Commission determines that it has legal authority to set a price cap carrier non-cost-based terminating switched access rates at $0.0007 per minute because price cap carrier rates are already non-cost-based, then the Commission must also apply the non-cost-based $0.0007 per minute rate to all price cap carrier switching, including tandem transit service.**

The tandem transiting rate proposed in Step 2 of the Missoula Plan capped the tandem transit service rate for price cap carriers at $0.0025 per minute, and allowed this rate to increase annually by inflation at Step 5.[21]

[18] In the *MAG Order*, the Commission also observed that ICLS will be constrained by carriers' embedded costs and recalculated annually to recoup any unrecovered costs. See *MAG Order*, ¶¶ 133-134.

[19] See In the Matter of High-Cost Universal Service Support (WC Docket No. 05-337) and In the Matter of Federal-State Joint Board on Universal Service, ¶ 10 (CC Docket No. 96-45), (rel. May 1, 2008) ("*CETC Cap Order*").

[20] *See the Sprint Ex Parte Letter* filed in CC Docket No. 01-92, and WC Docket No. 04-36, footnote 2, August 7, 2008.

Since the price cap carriers who signed onto the coalition letter believe that a local switching rate of $0.0007 per minute is adequate, it then follows that transiting rates, a similar switching function, should also be set at $0.0007 per minute.[22] Moreover, the volume of minutes traversing a tandem switch is much higher than that of a local central office switch, therefore that the Commission could set price cap tandem transiting rates at levels much lower than $0.0007 per minute. Reducing price cap carrier tandem transiting rates below $0.0007 per minute would provide further savings for IXCs, VoIP providers, and consumers.

5. All large, vertically-integrated communications carriers, such as AT&T and Verizon, should be required to provide non-discriminatory, cost-based special access transport services needed to reach the Internet backbone.

Increasing special access transport costs to the Internet backbone can harm rural consumers and RoR carriers and the problem worsens when those carriers must purchase special access services from large vertically integrated companies to connect their customers to the Internet backbone.[23] These costs as well as the IP costs associated with the middle mile[24] and the Internet backbone itself are significant costs of providing broadband service in rural areas and must be addressed in any comprehensive reform.[25] To achieve and maintain the goal of universal affordable broadband service for all Americans, the Commission should regulate the terms, conditions and prices of Internet backbone services, including special access transport needed to reach the Internet backbone, to ensure that large, vertically-integrated Internet backbone providers do not abuse their market power by imposing unfair and discriminatory pricing on small, rural communications carriers providing retail high-speed Internet access service in rural, insular and high-cost areas of the United States. The FCC has already adopted some of these conditions as part of the FCC's approval of the AT&T/BellSouth merger.[26] NTCA urges the FCC to broaden these conditions in the future.

[21] See the July 18, 2006, Executive Summary of The Missoula Plan, pages 11 and 12, filed in CC Docket 01-92.

[22] Transiting includes tandem transit service which is a switched transport service provided by a third party carrier using its tandem switch to effectuate indirect interconnection between two carriers within a local access transport area (LATA)(or in Alaska, within a local calling area). Tandem transit service also includes both tandem switching and tandem switched transport (also called common transport), or the functional equivalent, between the transit tandem location and the edge of a terminating carrier's network. Where the terminating carrier is an ILEC and the tandem transit provider interconnects with the ILEC at a meet point, tandem transit service stops at that meet point.

[23] Federal-State Joint Board Recommended Decision, p. 15.

[24] National Exchange Carrier Association (NECA), *Middle Mile Broadband Cost Study*, October 2001. NECA's findings were dire—concluding that high-speed Internet service is uneconomic in many rural areas. NECA further found that increased IP traffic will exacerbate, rather than ameliorate, the problem, as existing revenue shortfalls are multiplied as the scale of operations increases. For example, the study shows revenue shortfalls at $9.7 million per year at a 0.5% penetration rate, growing to $33.6 million per year at a 5% penetration rate, $49.8 million at a 10% penetration rate, and $63.8 million per year at a 15% penetration rate. NECA's sobering conclusion: "high-speed Internet service may not be sustainable in many rural areas based on pure economics. *See NECA Middle Mile Cost Study Executive Summary*, www.neca.org/source/NECA_Publications_1154.asp.

[25] Special access transport includes, among other services, packet-switched broadband services, optical transmission services (e.g., frame relay, ATM, LAN, Ethernet, video-transmission, optical network, wave-based, etc.), TDM-based services (e.g., DS-1, DS-3, etc.), and other future transport services to reach the Internet backbone.

[26] *In the Matter of A&T and BellSouth Corporation Application for Transfer and Control*, Order on Reconsideration, Appendix, Page 5, WC Docket No. 06-74, (rel. March 26, 2007).

Conclusion:

Based on the above reasons, the Commission should reject the proposed unified $0.0007 per minute terminating access rate. RoR LECs are making good on their promise to deliver broadband services to rural areas.[27] RoR LECs have made significant investments in the rural high-cost portions of America under an existing universal service support system that allows for recovery of a sufficient portion of a carrier's embedded costs of total regulated facilities. If these costs are no longer recovered through access charges and/or universal service, and an alternative recovery method is not available or is prohibited by regulators, then these costs will become stranded investment.[28] As Commissioner Copps stated:

> [i]t is essential, that any regime we adopt increase certainty so that rural carriers can plan for the future and undertake necessary investment to modernize the telecommunications infrastructure in their communities.[29]

Given the Act's goal of preserving and advancing universal service to ultimately provide consumers with access to advanced telecommunications and information services, failure to address stranded cost would be completely at odds with the intent of Sections 254 and 706 of the Act.

Lastly, the Regulatory Flexibility Act (5 U.S.C. §601) requires the FCC to consider alternative rules that will reduce the economic impact on small entities, such as RoR rural carriers. NTCA's USF and IC reform recommendations would reduce the economic impact on small RoR broadband providers and rural consumers. NTCA's proposals would also allow the Commission to meets its regulatory responsibility, promote the public interest, convenience, and necessity, spur development of new advanced communications technologies and broadband deployment, and most importantly ensure that consumers living in rural high-cost areas are able to receive high-quality, affordable voice and broadband services. NTCA therefore urges the Commission to reject the coalition proposal and adopt NTCA's recommendations to make certain consumers living in rural high-cost areas are able to receive high-quality, affordable voice and broadband services.

[27] *NTCA 2007 Broadband/Internet Availability Survey Report,* September 2007, www.ntca.org.

[28] The term "stranded investment" typically means plant facilities that are no longer in use and have not fully recovered their costs. However, in the context of this proceeding, stranded investment can result in plant facilities that are not fully recovering their costs but are still in use.

[29] *In the Matter of the Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers,* CC Docket No. 00-256; *Federal-State Joint Board on Universal Service,* CC Docket No. 96-45; *Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation,* CC Docket No. 98-77; *Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers,*(2001)(MAG Order), *Dissenting Statement of Commissioner Michael J. Copps.*

NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
4121 Wilson Boulevard • Tenth Floor • Arlington, Virginia 22203
Phone/703.351.2000 • Fax/703.351.2001 • www.ntca.org

NTCA's positions discussed are the same as those reflected in previous NTCA filings in these dockets. Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed via ECFS with your office. If you have any questions, please do not hesitate to contact me at (703) 351-2016.

Sincerely,

/s/ Daniel Mitchell
Daniel Mitchell
Vice President
Legal and Industry

DM:rhb

cc:
Donald Stockdale
Marcus Maher
Al Lewis
Randy Clarke
Randy Clarke
Victoria Goldberg
Jay Atkinson
Chris Barnekov
Lynne Engledow
Lisa Gelb
Matt warner
Katie King
Rebekah Goodheart
Nicholas A. Degani
Alex Minard

NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
4121 Wilson Boulevard • Tenth Floor • Arlington, Virginia 22203
Phone/703.351.2000 • Fax/703.351.2001 • www.ntca.org

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
High-Cost Universal Service Support and the	)	WC Docket No. 05-337
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
In the Matter of	)	
Developing a Unified Intercarrier Compensation	)	CC Docket No. 01-92
Regime	)	

NTCA
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
The Voice of Rural Telecommunications
www.ntca.org

INTERIM
UNIVERSAL SERVICE & INTERCARRIER COMPENSATION REFORM PROPOSAL

Respectfully submitted,

Daniel Mitchell
Vice President, Legal & Industry

Its Attorney

4121 Wilson Boulevard, 10th Floor
Arlington, VA 22203
(703) 351-2016

July 11, 2008

TABLE OF CONTENTS

Page

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
High-Cost Universal Service Support and the	)	WC Docket No. 05-337
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
In the Matter of	)	
Developing a Unified Intercarrier Compensation	)	CC Docket No. 01-92
Regime	)	

NTCA
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
The Voice of Rural Telecommunications
www.ntca.org

INTERIM
UNIVERSAL SERVICE & INTERCARRIER COMPENSATION REFORM PROPOSAL

The National Telecommunications Cooperative Association (NTCA)[1] hereby submits its Interim Universal Service Fund (USF) and Intercarrier Compensation (IC) Reform Proposal ("NTCA Interim USF & IC Reform Proposal" or "NTCA Interim Plan") in response to the Federal Communications Commission ("Commission" or "FCC"), May 2, 2008, News Release encouraging parties to refresh the record in the open dockets addressing universal service reform and/or intercarrier compensation reform.[2]

1 NTCA is the premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents 584 rural rate-of-return regulated telecommunications providers. All of NTCA's members are full service rural local exchange carriers (rural LECs) and many of its members provide wireless, cable, Internet, satellite and long distance services to their communities. Each member is a "rural telephone company" as defined in the Communications Act of 1934, as amended (Act). NTCA's members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

2 See FCC News Release "Interim Cap Clears Path for Comprehensive Reform – Commission Posted to Move Forward on Difficult Decisions Necessary to Promote and Advance Affordable Telecommunications for All Americans," (rel. May 2, 2008) ("FCC News Release").

I. INTRODUCTION

With access revenues shrinking, uncertain universal service reform pending, middle-mile costs increasing, and broadband infrastructure costs soaring, rural service providers and rural consumers are entering a perfect storm. In order to avert this impending danger, the Commission must act quickly to stabilize the federally regulated revenue streams that support rural LEC infrastructure currently used to deploy broadband, as well as provide voice service, to rural consumers living in rural, high-cost areas in the United States. The most expeditious and effective action the Commission can take immediately to avoid this imminent disaster is to cap federal interstate access charges for rate of return carriers at current rates and reassign unrecovered access revenue requirement to the Interstate Common Line Support (ICLS) universal service mechanism. This decisive FCC action now will preserve and advance universal service in high-cost and rural areas, will provide a specific and predictable universal service mechanism,[3] and will allow the Commission to fulfill its statutory responsibility to provide a reasonable cost recovery mechanism for rate of return carriers for the foreseeable future.

II. SUMMARY OF THE NTCA INTERIM USF & IC REFORM PROPOSAL

Contrary to the rhetoric of some, the decrease in access minutes is not simply the evolution away from a "legacy" network. Just as larger companies are migrating their current networks to IP based networks, rate-of-return (ROR) rural companies are also moving to an IP environment. Access charges are simply a "legacy" rate structure adopted and put in place by the Commission as one means of collecting some of the costs associated with the use and provisioning of a network common to both voice and broadband-related services. If access revenue disappears because the rate structure is no longer sustainable - as is now happening at an

3 See requirements in Section 254 (3) and (5).

alarming pace for rural ROR carriers - new rate structures or other means for recovering costs must be established to fund the costs of the common underlying network infrastructure.

Switched access voice services are declining and ultimately cannot be relied on to contribute to the funding for the universal service "social contract" between regulators and communications providers. Nevertheless, some amount of voice access traffic - representing an important part of cost recovery for ROR carriers - will remain in the short-term. But without rate-making intervention such as is proposed herein, ROR carriers' interstate voice access rates will continue to rise as access demand continues its steady, if not accelerating, decline. In today's communications environment access charges have become an unsustainable and flawed regulatory rate mechanism producing ever-rising rates for a service whose use is in permanent decline. The Commission has supported reducing access rates as good regulatory policy. Increasing access rates is contrary to this policy and jeopardizes universal service. That being the case, NTCA proposes that the three steps outlined below be implemented immediately to "plug the holes in the dike" while policymakers deal with more comprehensive long-term USF and IC reform.

NTCA's Interim USF & IC Reform Proposal is directed solely at ROR carriers because the Commission has already resolved interstate access and USF issues for large price-cap carriers through the *CALLS Order*, which capped interstate access rates and created Interstate Access Support (IAS) for price cap carriers.[4] As a result, a decline in switched access usage has no impact on access rates for large carriers. On the other hand, access demand decreases will force

4 Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, CC Docket Nos. 96-262 and 94-1, Sixth Report and Order, Low-Volume Long-Distance Users, CC Docket No. 99-249, Report and Order, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Eleventh Report and Order, 15 FCC Rcd 12962, (the Commission adopted comprehensive access charge and universal service reform for price cap carriers, based in part on a proposal submitted by the Coalition for Affordable Local and Long Distance Service (CALLS) (*CALLS Order*).

access rate increases for ROR carriers, which in turn hurts ROR carriers, the interexchange carriers that have to pay these increasing charges, and the customers they serve. The ICLS, under NTCA's Interim Plan, will serve the same "relief valve" function for ROR carriers that the IAS now serves for price-cap carriers. NTCA thus proposes the following interim measures for interstate access rate design and residual USF access revenue cost recovery:

1. ROR carriers' federal interstate switched access rates, for NECA pool companies as well as non-NECA ROR companies, should be capped at existing rate levels, until permanent access replacement funding is established for the transition to broadband funding.

2. Access costs that are unrecovered from those capped rates should be recovered from interim USF funding as another component of ICLS, consistent with the existing reliance on ICLS as a residual recovery mechanism for ROR carriers' access-related costs. Even with this additional ICLS support, the overall universal service fund size will likely not increase because of the Commission's recent establishment of a cap on support for competitive eligible telecommunications carriers ("CETCs")[5] and by the future elimination of the identical support rule for CETCs, which will free hundreds of millions of dollars in CETC USF support to be used for this and other purposes.[6] Existing federal high-cost USF mechanisms – High Cost Loop Support, Local Switching Support and Interstate Access Support (for price cap carriers) – and the criteria for existing ICLS support should remain intact through the duration of the interim plan.

3. A proceeding with a specific timeline should be opened to develop a transition from the PSTN universal service system to an IP/broadband universal service system. NTCA recommends that the ultimate IP/broadband USF mechanism for ROR companies should include the characteristics contained in its comments filed earlier this year in the Commission's three universal service Notice of Proposed Rulemakings (NPRMs).[7] Additional, more detailed, recommendations will be forthcoming from NTCA.

---

5 See In the Matter of High-Cost Universal Service Support (WC Docket No. 05-337) and In the Matter of Federal-State Joint Board on Universal Service (CC Docket No. 96-45), (rel. May 1, 2008) ("*CETC Cap Order*").

6 See In the Matter of High-Cost Universal Service Support and the Federal-State Joint Board on Universal Service, Notice of Proposed Rulemaking, FCC 08-4, (rel. January 29, 2008) ("Identical Support NPRM")

7 See In the Matter of High-Cost Universal Support, Federal-State Joint Board on Universal Service, WC Docket No. 05-337, CC Docket No. 96-45, Comments filed April 17, 2008, by the National Telecommunications Cooperative Association ("NTCA Comments"). Specifically, the NTCA Comments recommend that the Commission: (1) include broadband in the future definition of universal service; (2) expand the base of USF contributors to include all broadband providers; (3) require all carriers seeking additional or new federal high-cost broadband USF support to submit their Title II regulated costs, revenues and earnings when determining future USF disbursements; and (4) adopt and implement a transition plan to fairly and equitably move the communications industry from the PSTN world to the IP world.

For several years now, access usage and revenues have been declining. As we continue to move inexorably from the Public Switched Telephone Network (PSTN) world to an Internet protocol (IP) based world, both interstate and intrastate access revenues will continue to recede. Soon, the National Exchange Carrier Association (NECA) interstate pool and the NECA settlements that are paid out of the pool will no longer be sustainable. As access usage drops, access rates rise to cover the costs of carriers in the pool. As access rates rise, demand will be further depressed, thus exacerbating the downward spiral in access usage and revenues. The problem will accelerate as consumers adopt IP-based technologies.

The Regulatory Flexibility Act (5 U.S.C. §601) requires the FCC to consider alternative rules that will reduce the economic impact on small entities. NTCA's Interim USF & IC Reform Proposal and NTCA's proposed high-cost universal service reform recommendations filed on April 17, 2008, will reduce the economic impact on small rural providers of the shift to IP-based telecommunications. NTCA's proposals will also allow the Commission to meet its statutory responsibility to provide a reasonable means of cost recovery, will promote the public interest, convenience, and necessity, will spur development of new advanced communications technologies and broadband deployment, and most importantly will ensure that consumers living in rural high-cost areas are able to receive high-quality and affordable voice and broadband services.

III. FEDERAL INTERSTATE SWITCHED ACCESS RATE CAP AND RESIDUAL ICLS REASSIGNMENT

Rate of return carriers derive the revenues necessary to provide service to their customers from several federally established and regulated rate structures and funding mechanisms: (1) subscriber line charges; (2) access charges; (3) universal service funds; (4) cost or average schedule settlements; and (5) other charges to the end user customers. Should any of these rate structures or funding mechanisms shrink appreciably or be eliminated, the funding for rural telecommunications networks will be at risk, endangering those who have come to rely upon these networks — rural consumers and the providers who serve them.

Simply stated, rural ROR carriers face a crisis today precipitated by declining demand for switched access services on the PSTN. Ironically, this reduction in minutes of use on the PSTN has the effect of not only reducing revenues, but also increasing switched access rates for ROR carriers.[8] At some point in near future, the NECA interstate pool and the NECA settlements that are paid out of the pool will no longer be sustainable. As access usage drops, access rates will continue to rise to cover the costs of carriers in the pool. As access rates rise, access demand will be further depressed, thus exacerbating the downward spiral in access usage and revenues. The problem will accelerate as consumers adopt IP-based technologies. More importantly, the reduction in access revenues will directly affect the ability of rural carriers to continue to fulfill current universal service obligations and to invest in broadband infrastructure in rural and high-cost areas of the nation.

As a long-standing policy, and most recently in its *CETC Cap Order* and FCC News Release, the Commission has recognized the interrelationship between any reductions in intercarrier compensation and USF support for rural ROR carriers. For instance, in the news release the Commission stated:

> Universal service support for carriers serving rural, high-cost areas is based on a formula that looks at a carrier's costs and revenues, both from end users and from intercarrier compensation. Many rural carriers currently collect a significant percentage of their revenues from intercarrier compensation in the form of interstate and intrastate access charges. If intercarrier compensation revenues are decreased, demand on the Fund increases as offsetting support payments go up.[9]

8 NECA pool rates are designed to recover the total revenue requirements of ROR carriers. As minutes of use decline more rapidly than the revenue requirement associated with the ROR carriers' networks, the access rates necessary to recover the revenue requirement must increase.

9 FCC News, "FCC Takes Action to Cap High Cost Support Under the Universal Service Fund" (rel. May,1 2008)

The outstanding question that has yet to be answered is: "How to implement further intercarrier compensation reforms while minimizing the impact on USF growth?" NTCA believes that the combination of measures contained in this interim proposal will be a major step toward providing a positive answer to that question, and to setting the stage for further necessary reforms as we move toward the IP world.

In order to stabilize interstate switched access rates, a cap on the aggregate NECA pool interstate switched access rate should be established at the level in effect as of July 1, 2008[10] To recover access costs that would not be recovered due to the cap on access rates, residual revenue requirements would be received from the ICLS so that each carrier would receive a composite revenue total (from interstate access rates and supplemental ICLS) equal to the carrier's total prospective traffic-sensitive revenue requirement. This supplemental support from ICLS would be in addition to each ROR carrier's ongoing ICLS support under existing rules.

Under this proposed cap, rural ROR carriers' switched access rate levels remain cost based, but are limited by a cap. The remaining cost-based access revenue requirement is assigned to ICLS for recovery. In the first year of the plan there would be no residual costs that would need to be recovered through ICLS and it is estimated that at the end of the five years the annual ROR residual costs recovered from ICLS will not be more than $235 million. Three scenarios containing estimated reassignment of access costs from access rates to ICLS for NECA and independent tariff ROR carriers over the next five years under this proposal are shown in Attachment A.[11]

---

10 For carriers filing their own tariffs, an aggregate federal interstate switched access rate cap should also be established.

11 The Commission could limit the level of residual access costs to be recovered from ICLS by addressing disputes related to the application of access charges. In general, the disputes have involved the following determinations: 1) whether traffic is subject to access charges; 2) which carrier has the financial obligations to pay the access charges;

NTCA's Interim Proposal is directed solely at ROR carriers because the Commission has already resolved these issues for large price-cap carriers. As a result, the decline in access usage has no impact on access rates for large carriers. On the other hand, access demand decreases will force access rate increases for rural ROR carriers, which in turn hurts ROR carriers and the interexchange carriers that have to pay these charges, as well as the customers they both serve. The culprit behind these ever-increasing access rates is the existing access rate structure for rural ROR carriers.

The NTCA Interim Plan directly addresses this problem by capping interstate access for ROR carriers at current levels. The proposal recommends that residual access costs be recovered from ICLS because the Commission initially established the ICLS mechanism to recover residual access costs previously contained in interstate access elements. Allocating additional residual interstate access elements is consistent with the *MAG Order* and, as previously noted, also with the approach the Commission adopted in the *CALLS Order* in establishing IAS. In addition, allowing recovery of both traffic-sensitive and non-traffic-sensitive costs from ICLS is also consistent with the *MAG Order*.[12] Recently, the Commission allowed certain carriers who converted from ROR to Price Cap regulation to retain their ICLS.[13]

---

and 3) which carrier has the responsibility to make available the proper and necessary information in order to assess and bill access charges on access traffic. First, the Commission should grant the NECA Petition thereby extending call signaling rules to all carriers and interconnected voice service providers, including IP-enabled providers (as would the Signaling Act), and clarifying the application of these rules. Along with these actions, the Commission should also resolve the long-standing Arizona Dialtone Petition request by specifying the correct number to pass in the CN parameter to facilitate correct billing treatment for the call. Next, the Commission should grant the Embarq Petition related to the ESP exemption on any IP-to-PSTN voice traffic. Finally, the Commission should adopt a portion of the interim phantom traffic proposal filed by Missoula Plan Supporters, calling for the creation and exchange of call detail records and call summary information.

12 See In the Matter of Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers, Second Order and Further Notice of Proposed Rulemaking, FCC Docket No. 01-304, (rel. October 11, 2001) ("*MAG Order*"), ¶¶ 100 & 136, ftn. 375.

13 The Commission has also found that it is appropriate for carriers that were rate-of-return that convert to price cap regulation to continue to receive high-cost universal service support to explicitly recover their common line costs by

To effectuate this proposal, each ROR carrier, filing independently or through NECA, will be required to file its prospective traffic-sensitive revenue requirements[14] and prospective interstate switched access demand for the test year with the Commission. Based upon these filings, the Universal Service Administrative Corporation ("USAC') would then make the appropriate adjustment to the company's ICLS distribution based on the difference between the estimated revenue from switched access rates in the test period and the total estimated (unadjusted) switched access revenue requirement. To maintain the alignment between cost and rates, all NECA and independent tariff ROR carriers will develop an adjustment factor for each test year which, when applied to the traffic sensitive (TS) revenue requirement, will determine which costs are subject to interstate access ratemaking and which costs will be attributable to ICLS recovery. This supplemental ICLS recovery would be subject to subsequent true-up, just as ICLS is today.[15]

Again, this important change in the ratemaking process for interstate switched access is consistent with the policy that the Commission first applied in its last significant reform of intercarrier compensation for ROR carriers in 2001 when ICLS was established.[16] In the *MAG Order*, the Commission shifted ROR carriers' costs from various interstate access elements to be recovered from a new, explicit USF support mechanism, ICLS. In its deliberation in the *MAG Order*, the Commission changed the cost recovery for line ports and the transport interconnection charge (TIC) from switched access rates to ICLS.

---

allowing such carriers to continue to receive ICLS. *See Windstream Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief*, WC Docket No. 07-171, Order (rel. Mar. 18, 2008), ¶¶ 19-22.

14 For those companies electing average schedule treatment, estimated average schedule settlements would be a proxy for those companies' costs, as is done today within the pool.

15 See 47 C.F.R. §54.903(a)(4).

16 See *MAG Order*, ¶¶ 100 & 136, ftn. 375.

The Commission adopted a proxy of 30 percent as the portion of overall local switching costs associated with line ports, and thus allocated that amount to the common line category.[17] In the *MAG Order,* the Commission recognized that ROR carriers' line port costs may vary widely, and also indicated an awareness that some carriers' line port costs were significantly more than 30 percent of total local switching costs.

In similar fashion, the Commission concluded that TIC costs were related to different access categories and represented both traffic-sensitive costs and non-traffic-sensitive costs. Thus, it ordered that the TIC costs were to be spread proportionately to all other rate elements.[18] While it stated that equally valid alternative methods for assigning TIC costs could have been adopted, the Commission admitted that it could not determine from the record in the proceeding the exact portion of the costs recovered from TIC that were transport related.[19]

For both local switching costs and TIC-related transport costs, it would be entirely consistent with the Commission's action in the *MAG Order* to assign a different proportion of local switching and transport cost between the common line, switching and transport categories and to recover these common line costs with a supplemental distribution from ICLS as proposed in this plan. The ICLS mechanism developed by the Commission can accommodate additional costs that may be re-categorized as common line costs upon further reconsideration. In initially establishing the ICLS without a cap, the Commission recognized that allowing recovery of interstate access costs is essential for ROR carriers because those companies are "particularly sensitive to disruptions in their interstate revenue streams."[20]

---

17 See *MAG Order*, ¶94.

18 See *MAG Order,* ¶100.

19 See *MAG Order*, ¶101.

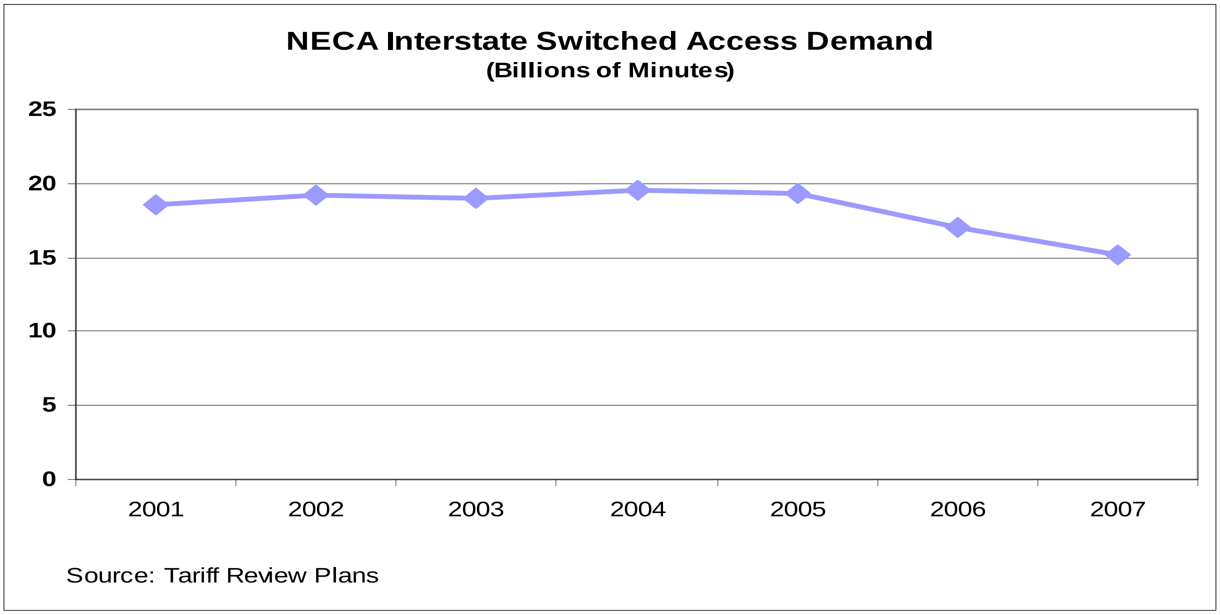
20 See *MAG Order*, ¶ 134.

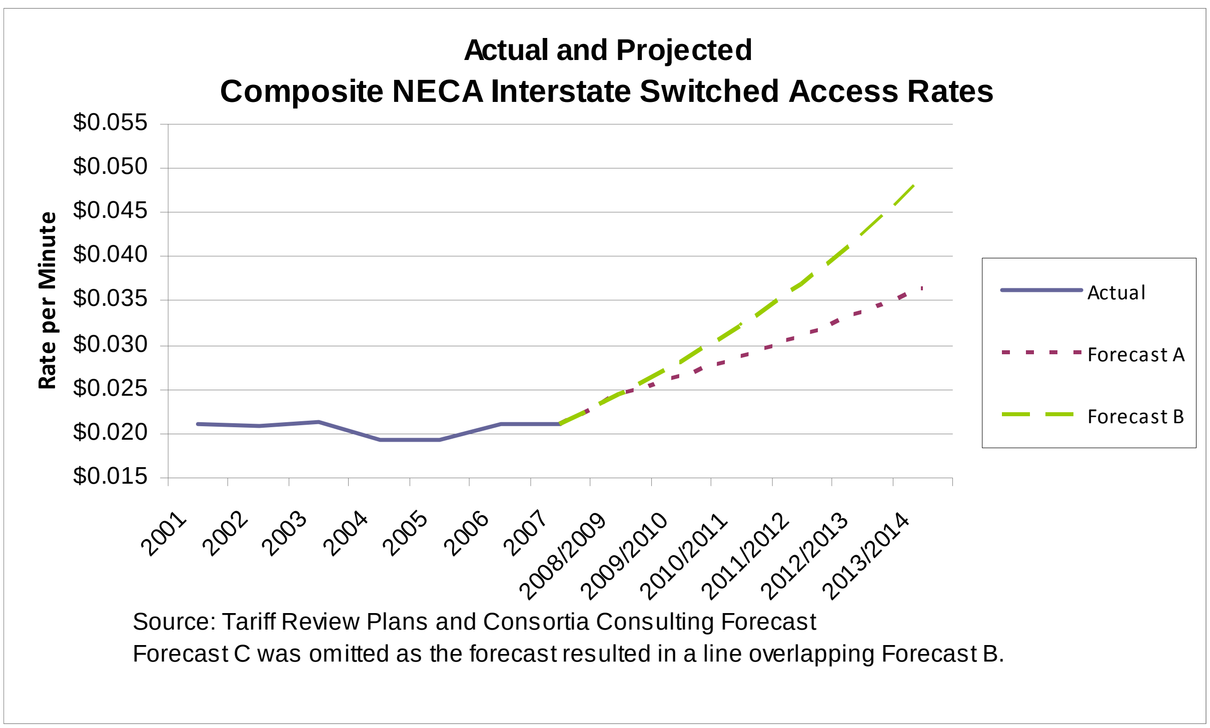
The capping of interstate access rates and reassigning of access-related costs to ICLS is necessary to remedy the looming disruption of ROR carriers' operations and universal service obligations to their customers. The precipitous decline in switched access traffic constitutes a serious, ultimately debilitating effect on ROR carriers' ability to serve their customers, thus requiring immediate action. In its 2008 interstate access tariff filing, NECA forecasted local switching minutes to decline by almost 12 percent.[21] This forecasted decrease was on top of an 11.4 percent reduction from 2006 to 2007 that NECA had previously reported.[22] Given the shift away from long-distance service to other services that do not utilize switched access, it is obvious that ROR carriers' switched access demand will continue to decline. This reduction in interstate access demand will result in ever escalating access rates for ROR carriers unless this Commission takes immediate interim action. The current and forecasted decline in switched access demand and the resulting and forecasted increase in switched access rates are clearly

21 See NECA Access Service Tariff F.C.C. No. 5, Transmittal No. 1214, June 16, 2008, Volume 3 at p. 4. This decline is measured by comparing the forecast for the 2008/2009 tariff period against the actual minutes of use for the 2007 calendar year.

22 See NECA TRP filing Excel File; sheet 'DMD-1 Page 3'. Percent decline represents the change from actual 2006 minutes of use to actual 2007 minutes of use.

shown in the graphs below.[23]





23 The forecast of switched access rates assumes that pool composition remains constant, i.e., no pool members enter or exit the pool, and that revenue requirements do not shift between switched and special access.

Implementing a cap on interstate rates will ensure that ROR carriers' access rates do not continue to increase, which will benefit multiple parties. Interexchange carriers will benefit by paying lower access rates than they otherwise would if rates were not capped. Since interexchange carriers pass on access costs in their retail long-distance rates, customers will also benefit by paying lower retail long-distance rates. Moreover, rural customers will also continue to receive the high-quality service and will benefit by rural carriers' continued investment in broadband infrastructure.

In addition, implementing the recovery of residual common line revenue requirements from ICLS for ROR is also sound public policy, building on the record in the *MAG Order.* Since supplemental support it is limited solely to ROR carriers, which represent a small portion of the nation's access lines relative to price cap carriers, such a change will not result in large increases in the USF.[24] Indeed, recently in its *CETC Cap Order*, the Commission observed that both Local Switching Support and ICLS for ROR carriers have been stable in recent years.[25] Thus, the stability in the size of ICLS for incumbent LECs that the Commission anticipated seven years ago in the *MAG Order* has occurred. This stability should continue under NTCA Interim USF & IC Reform Proposal

Immediately following the Commission's issuance of an order adopting this proposal, NTCA recommends that the Commission issue a notice of proposed rulemaking to institute the plan within 90 days. The interim plan may expire after the full implementation and completion of the FCC's more comprehensive long-term high-cost USF and IC reforms, unless the Commission then determines that it is appropriate to continue the cap and supplemental ICLS

24 In the *MAG Order*, the Commission also observed that ICLS will be constrained by carriers' embedded costs and recalculated annually to recoup any unrecovered costs. See *MAG Order*, ¶¶ 133-134.

25 See *CETC Cap Order*, ¶ 10.

based on the lifecycle of switched access or other reasons. By that time, however, it is reasonable to project that the contribution of switched access to ROR carriers' incomes will have decreased to such an extent so as to be negligible and market conditions will likely warrant implementation of an IP universal service system.

IV. COMMISSION SHOULD INITIATE A PROCEEDING TO INVESTIGATE THE IMPLICATIONS OF THE IP PARADIGM SHIFT ON UNIVERSAL SERVICE AND BROADBAND DEPLOYMENT.

The models for exchange of Internet traffic are drastically different from models for exchange of PSTN traffic.[26] The financial responsibility for the exchange of PSTN traffic is borne by either the "owner" of the retail relationship (as is the case for access traffic) or the originator of the call (as is the case for reciprocal compensation traffic). For the exchange of Internet traffic, the financial responsibility lies with the entity with the lesser comparable value in the traffic exchange. Thus, as applications converge to IP network platforms, intercarrier compensation dollars flow from the smaller providers to the larger providers.

This compensation scenario presents a major problem for small network service providers, such as the ROR carriers serving the most rural areas of the country. Instead of being recipients of intercarrier compensation revenue (through access charges and reciprocal compensation), the IP revenue flows are reversed, and small, rural ROR carriers become payers. Without traditional intercarrier compensation revenue, rural ROR carriers cannot fund advanced network investment. In other words, the shift of traffic to IP threatens the ability of small carriers to continue providing access to that same IP-based world.

The Commission must recognize that this fundamental shift in compensation threatens the ability of rural carriers to build the necessary infrastructure to provide quality advanced and

26 Although, as has been observed, there is widespread existence of IP-enabled traffic that utilizes the PSTN, and in such instances it is becoming increasingly apparent that sound policy calls for payment by IP providers when they utilize PSTN resources.

information services at just, reasonable and affordable rates. This fundamental shift in compensation is the reason that NTCA proposes as part of this interim plan that the Commission initiate a proceeding to investigate the implications of the IP paradigm shift on universal service and ability of rural carriers to deploy broadband.

In its recent filing with the Commission on the three USF NPRMs, NTCA made several recommendations related to long-term high cost universal service reform.[27] NTCA believes that its recommendations provide the basis for a further investigation and proposed rulemaking by the Commission.

NTCA proposed that as an initial action, broadband service should be included in the definition of universal service.[28] The Commission should include, in the proposed new proceeding, an investigation into the specific nature of the broadband service that would be included in the definition of universal service. The Commission should also investigate the legal foundation for including generally available broadband services.

Second, based on NTCA's recommendation, the Commission should offer for comment a tentative conclusion that USF contribution responsibilities be expanded to include all broadband service providers, [29] which would include providers of both public and private broadband service. These providers all have a telecommunications component in the delivery of their services offered for a fee. Because of this, the Commission has a solid legal framework for expansion of the USF contribution base to include broadband service providers.

Finally, as proposed by NTCA, the Commission should investigate the costs associated with middle-mile and Internet backbone services for small ISPs providing service in rural areas

27 See NTCA Comments filed on April 17, 2008 in WC Docket No. 05-337 and CC Docket No. 96-45.

28 *Id.*, p. 8.

29 *Id.*, p. 9.

and consider implications for access to advanced information services.[30] In many rural areas, consumers have only one quality alternative for broadband Internet access and that is the rural LEC's affiliated ISP. As applications migrate to IP platforms, the affiliated ISP becomes the Internet lifeline for many rural consumers. Without major reforms, however, these rural consumers are at risk of not having this lifeline.

NECA performed an extensive analysis of middle-mile costs in a recent study.[31] NECA's findings were dire—concluding that high-speed Internet service is uneconomic in many rural areas. NECA further found that increased IP traffic will exacerbate, rather than ameliorate, the problem, as existing revenue shortfalls are multiplied as the scale of operations increases. For example, the study shows revenue shortfalls at $9.7 million per year at a 0.5% penetration rate, growing to $33.6 million per year at a 5% penetration rate, $49.8 million at a 10% penetration rate, and $63.8 million per year at a 15% penetration rate.[32] NECA's sobering conclusion: "high-speed Internet service may not be sustainable in many rural areas based on pure economics."[33]

NTCA members report similar realities. While the cost of purchasing Internet capacity on a per-megabit basis has gone down over the last several years, large increases in customer demand require small rural LECs to buy more and more broadband/Internet capacity, thus middle-mile cost have increased dramatically. One NTCA member company, which provided NTCA with cost data under the proviso that its identity not be revealed, reported that total bandwidth costs for backhaul purposes increased by 105% between 2001 and 2008. Over the

30 *Id.*, pp. 49-50.

31 National Exchange Carrier Association (NECA), Middle Mile Broadband Cost Study, October 2001.

32 NECA, Middle Mile Cost Study Executive Summary, www.neca.org/source/NECA_Publications_1154.asp.

33 *Ibid.*

same period, Internet access capacity costs increased by more than 500%. While these cost increases were, in part, offset by increased broadband revenues, the average cost per customer is increasing because consumers are consuming increasingly larger quantities of bandwidth. At the same time carriers have limited ability to raise rates due to affordability constraints.

Risk and reward are the principal factors in determining both the availability and the cost of investment capital. Financing from Rural Utilities Service, CoBank, Rural Telephone Finance Cooperative and other sources will dry up for small rural broadband providers if the investments become too risky because of lost access revenues, and increased broadband-related costs. Absent Commission action, current loans could be at risk since revenues are falling and the broadband infrastructure that has been deployed has not yet been paid for. Consequently, it will become increasingly difficult, if not altogether impossible, for rural ROR providers to continue to deploy, upgrade and maintain their broadband infrastructure. Broadband deployment in rural areas served by ROR carriers will be slowed or stop dead in its tracks. Pushed to the extreme, it is possible that a financial crisis could develop for rural ROR carriers, just as is happening today in the mortgage banking industry.

This broadband cost trend is obviously not sustainable, and it threatens the ability of rural ROR carriers to continue providing broadband services to their customers. The Commission should initiate an investigation into the costs charged to small carriers and rural ISPs associated with middle-mile and Internet backbone services to preserve access to advanced information services in rural areas.

V. THE ROLE OF THE STATES IN USF AND THE IMPLICATIONS OF SEPARATIONS REFORM IN AN IP/BROADBAND WORLD

Today, the method for the allocation of accounting costs and revenue between the states and the federal jurisdiction consists of an elaborate combination of allocations, direct assignments, and actual use measurements.[34] Essential to the current separations process is the application of a Uniform System of Accounts and the ability to measure traffic between defined end points in a circuit-switched environment, where the locations of the end points of a call determine the jurisdiction of the traffic and, therefore, the allocation of certain network costs to a jurisdiction. Allocated costs and jurisdictional traffic demand are used in the interstate jurisdiction (as well as in many states) to provide the basis for access charge ratemaking.

In such jurisdictions, the allocation of costs and revenues is also the foundation for the assessment and distribution processes in universal service funding systems. The federal rules allocate a portion of loop cost to the federal jurisdiction if loop costs in a study area are extraordinary.[35] For rural carriers, these extraordinary loop costs reassigned to the federal jurisdiction are recovered through the federal High Cost Loop Support program. A similar process applies to switching cost and recovery through the federal Local Switching Support program.[36]

Significant questions arise if one attempts to apply the current separations process to the IP world. First, if accounting costs associated with the production of IP services are to be assigned to jurisdictions, one must apply a uniform accounting system to the IP world. Further, the allocation of costs based on actual use requires that the end points of a transmission be determined. What parameter would be used to measure actual use, and for what service or services would such usage would be measured is yet unknown.[37] Finally, even if allocation principles can be identified (based on actual use or some other measure), the means by which

---

34 47 C.F.R. § 36.2 (a)

35 47 C.F.R. § 36.631 Expense Adjustment

36 47 C.F.R. § 54.301 Local Switching Support

37 It is also perhaps nonsensical to measure both connection-oriented and connectionless transmissions on an IP-based network.

states would collect monies in order to fund broadband costs allocated to their jurisdiction is also undetermined.

As part of establishing a new USF regime in the IP/broadband environment, NTCA further recommends that the Commission drastically modify existing separations rules. As such, a determination should be made in this IP/broadband rulemaking as to the portion of ROR carriers' costs that are to be funded by the states. Although it is difficult to determine the nature of IP traffic and the Commission historically has categorized these new services as interstate, NTCA believes it is necessary and appropriate that states have some role in meeting a portion of the funding obligation. That being the case, another critical part of the USF proceeding proposed in the NTCA plan would be an inquiry into the issues of separations, the states' roles for the recovery of a portion of IP-related network costs, and the portion of IP-related network costs that should be allocated to the state jurisdiction.

VI. THE FCC HAS A STATUTORY RESPONSIBILITY TO ADOPT A RATE STRUCTURE OR MECHANISM THAT PROVIDES AN OPPORTUNITY FOR ROR CARRIERS TO RECOVER COSTS INCLUDING A REASONABLE RETURN AND DOES NOT RESULT IN A CONFISCATORY TAKING

The Commission has an obligation to address serious flaws with the current Commission-established access rate structure. In so doing, the Commission will sustain universal service and provide incentives for continued rural broadband investment. Utilities are protected from the taking of their property by the United States Constitution. This protection extends to a prohibition on the setting of confiscatory rates that result in a taking of property.

Pursuant to the 5th Amendment,[38] Sections 201 and 254 of the Act, and existing regulatory precedent,[39] the Commission has a legal responsibility to provide rates and a rate

38 United States Constitution, Amendment V.

structure for rural ROR carriers that does not result in a confiscatory taking and will provide an opportunity to recover costs as well as earn a reasonable return on those investments made to provide service.[40] The Commission has previously recognized this responsibility, specifically stating that "[r]ate-of-return carriers charge rates that are designed to provide the revenue required to cover costs and to achieve a prescribed return on investment."[41] In exchange for a reasonable opportunity to recover costs including a reasonable return, ROR carriers have provided quality service at rates reasonably comparable to those in urban areas to **all** rural consumers in the areas they serve, and have fulfilled all carrier of last resort obligations.

Courts have long evaluated utility rates against the back drop of the requirements of the Constitution and confiscatory rates. i.e., *Bluefield Water Works v. Public Service Commission* 262 U.S. 679 (1923) and *Federal Power Commission, et al. v. Hope Natural Gas Co., et al.*, 320 U.S. 591 (1944). It is clear that "[t]he Constitution protects utilities from being limited to a charge for their property serving the public which is so 'unjust' as to be confiscatory." *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 307-308 (1989) (citing *Covington & L Turnpike Road Co. v. Sandford*, 164 U.S. 578, 597 (1896) (A rate is too low if it is "so unjust as to destroy the value of [the] property for all the purposes for which it was acquired," and in so doing "practically deprive[s] the owner of property without due process of law"); *Federal Power Commission v. Natural Gas Pipeline Co.*, 315 U.S. 575, 585 (1942) (summary omitted.); *Federal Power Commission v. Texaco, Inc.*, 417 U.S. 380, 391-92 (1974)) (summary omitted.)

---

39 See In the Matter of Federal State Joint Board on Universal Service, CC Docket No. 96-45, FCC 01-157, Fourteenth Report & Order (May 23, 2001) ("*RTF Order*"), ¶¶ 24 and 25. See also, *MAG Order*, ¶¶ 3, 12, 131, 132, and 134.

40 See *F.C.C. v. Florida Power Corp*. 480 U.S. 245, 253-254 (1987).

41 *MAG Order* (FCC 01-304), ¶19.

To guard against a confiscatory rate, the Commission should employ the general standard that the rate mechanisms used by the Commission should provide a ROR carrier with a reasonable opportunity to recover costs, including a reasonable rate of return.[42] This standard does not guarantee a return, but requires the opportunity. The current situation does not provide this opportunity.

The access situation is deteriorating. The Commission has no choice but to act on this matter because a failure by the Commission to act will ultimately result in confiscatory rate mechanism for ROR carriers. Consequently, inaction is not an option and will only spawn Constitutional taking claims by ROR carriers. This result is unnecessary and as in the past we expect that the Commission will recognize that "rate-of-return carriers are particularly sensitive to disruptions in their interstate revenue streams"[43] and take action to address the problem. The plan provided in this filing sets forth a reasonable approach to resolve this issue on an interim basis and to fulfill the Commission's statutory obligations.

The Commission has consistently recognized this legal responsibility and has regulated in a manner that allows ROR carriers to recover their costs along with a reasonable return on investment.[44] The Commission has also recognized the unique characteristics of rural ROR carriers and the unique challenges they face in providing quality service to their customers.[45]

---

42 See, discussion of *Federal Power Commission v. Hope Natural Gas*, 320 U.S. 591 (1944) in Duquesne at 310. "Today we reaffirm these teachings of Hope Natural Gas: "[I]t is not theory but the impact of the rate order which counts. If the total effect of the rate order cannot be said to be unreasonable, judicial inquiry ... is at an end. The fact that the method employed to reach that result may contain infirmities is not then important." Id., at 602, 64 S.Ct., at 288. This language, of course, does not dispense with all of the constitutional difficulties when a utility raises a claim that the rate which it is permitted to charge is so low as to be confiscatory: whether a particular rate is "unjust" or "unreasonable" will depend to some extent on what is a fair rate of return given the risks under a particular rate-setting system, and on the amount of capital upon which the investors are entitled to earn that return. At the margins, these questions have constitutional overtones."

43 *MAG Order*, ¶ 134.

44 *RTF Order*, ¶¶ 24 and 25 and *MAG Order*, ¶¶ 3, 12, 131, 132, and 134.

45 *RTF Order*, ¶¶ 24, 25, and 79 and *MAG Order*, ¶¶ 3, 12, 131, 132, and 134.

The Commission articulated the unique characteristics of rural ROR carriers, their dependence on access charge revenues, and the need to preserve universal service in the *MAG Order*, stating that "Our examination of the record reveals that rate-of-return carriers generally are more dependent on their interstate access charge revenue streams and universal service support than price cap carriers and, therefore, more sensitive to disruption of those streams. . . . . The approach that we adopt will provide these carriers with certainty and stability by ensuring that the access charge reforms we adopt do not affect this important revenue stream."[46] The Commission and the Joint Board have recognized that ROR regulation along with the universal service fund have worked well in rural areas, not only for providing quality service at reasonable rates but also for deploying broadband in rural areas.[47] Now is the time for the Commission to take the next step to address the current access rate structure problem.

VII. CONCLUSION

The Commission has a legal responsibility to provide ROR carriers with an opportunity to recover costs as well as to earn a reasonable return on those investments. In exchange for a reasonable opportunity to recover costs including a reasonable return, ROR carriers have provided quality service at rates reasonably comparable to those in urban areas to **all** rural consumers in the areas they serve. The current access charge system can no longer provide a reasonable opportunity to recover costs and therefore the Commission must take immediate action if it is to fulfill its legal responsibilities.

Failure to act will result in little or no additional investment in broadband infrastructure and will result in a painful, potentially devastating crisis for rural telecommunications customers and the carriers that serve them. If such a scenario were allowed to transpire, rural customers

---

46 *MAG Order*, ¶ 131.

47 *MAG Order*, ¶ 224 and Joint Board Recommended Decision, ¶¶ 30 and 39.

served by ROR carriers would likely have few, if any, others means for receiving telecommunications services because the rural ROR carriers provide the underlying networks necessary for other technologies, such as wireless, to operate. In a very real sense, these rural customers will be disconnected from the emerging IP-based economy. Failure to act will also mean that the Commission has failed to fulfill its statutory obligations. NTCA urges the Commission to implement NTCA's Interim USF & IC Reform Proposal now in order to fulfill its legal responsibility to provide a reasonable cost recovery mechanism, to preserve and advance universal service in high-cost and rural areas, and to provide a specific and predictable universal service mechanism.

The Regulatory Flexibility Act (5 U.S.C. §601) requires the FCC to consider alternative rules that will reduce the economic impact on small entities. NTCA's interim and long-term USF and IC reform recommendations would reduce the economic impact on small rural broadband providers and rural consumers. NTCA's proposals will allow the Commission to meets its regulatory responsibility, will promote the public interest, convenience, and necessity, will spur development of new advanced communications technologies and broadband deployment, and most importantly will ensure that consumers living in rural high-cost areas are able to receive high-quality, affordable voice and broadband services. NTCA therefore urges the Commission to adopt NTCA's recommendations and ensure consumers living in rural high-cost areas are able to receive high-quality, affordable voice and broadband services.

Respectfully submitted,

NTCA

NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION

The Voice of Rural Telecommunications

www.ntca.org

By: /s/Daniel Mitchell
Daniel Mitchell
Vice President, Legal & Industry

Its Attorney

4121 Wilson Boulevard, 10th Floor
Arlington, VA 22203
(703) 351-2016

CERTIFICATE OF SERVICE

I, Adrienne L. Rolls, certify that a copy of the National Telecommunications Cooperative Association's (NTCA's) Interim Universal Service Fund (USF) and Intercarrier Compensation (IC) Reform Proposal in WC Docket No. 05-337, CC Docket No. 96-45 and Docket No. CC 01-92 in response to the FCC, May 2, 2008 News Release was served on this 11th day of July 2008 by first-class, United States mail, postage prepaid, or via electronic mail to the following persons:

Chairman Kevin J. Martin
Federal Communications Commission
445 12th Street, SW, Room 8-B201
Washington, D.C. 20554
Kevin.Martin@fcc.gov

Commissioner Deborah Taylor Tate
Federal Communications Commission
445 12th Street, SW, Room 8-A204
Washington, D.C. 20554
Deborah.Tate@fcc.gov

Commissioner Michael J. Copps
Federal Communications Commission
445 12th Street, SW, Room 8-B115
Washington, D.C. 20554
Michael.Copps@fcc.gov

Commissioner Jonathan S. Adelstein
Federal Communications Commission
445 12th Street, SW, Room 8-A302
Washington, D.C. 20554
Jonathan.Adelstein@fcc.gov

Commissioner Robert M. McDowell
Federal Communications Commission
445 12th Street, SW, Room 8-C302
Washington, D.C. 20554
Robert.McDowell@fcc.gov

Best Copy and Printing, Inc.
Federal Communications Commission
445 12th Street, SW, Room CY-B402
Washington, D.C. 20554
fcc@bcpiweb.com

/s/ Adrienne Rolls
Adrienne Rolls

ATTACHMENT A: RATE OF RETURN ICLS PLAN IMPACT

NECA Pool Estimated Switched Access Demand, Switched Revenue and Revenue Requirement

Description	Actual 2006	Actual 2007 from NECA Filing	Baseline for Forecast from NECA Filing Data 2008/2009	2009/2010	2010/2011	2011/2012	2012/2013	2013/2014
SCENARIO A								
Minutes of Use	17,063,479,995	15,125,497,727	12,504,298,580	11,253,868,722	10,128,481,850	9,115,633,665	8,204,070,298	7,383,663,269
Revenue @ Capped Rate			$306,046,698	$275,442,028	$247,897,825	$223,108,043	$200,797,239	$180,717,515
Revenue Requirement	$358,581,380	$320,578,000	$306,046,698	$298,395,531	$290,935,642	$283,662,251	$276,570,695	$269,656,428
SCENARIO B								
Minutes of Use	17,063,479,995	15,125,497,727	12,504,298,580	10,628,653,793	9,034,355,724	7,679,202,365	6,527,322,011	5,548,223,709
Revenue @ Capped Rate			$306,046,698	$260,139,693	$221,118,739	$187,950,928	$159,758,289	$135,794,546
Revenue Requirement	$358,581,380	$320,578,000	$306,046,698	$298,395,531	$290,935,642	$283,662,251	$276,570,695	$269,656,428
SCENARIO C								
Minutes of Use	17,063,479,995	15,125,497,727	12,504,298,580	10,003,438,864	8,002,751,091	6,402,200,873	5,121,760,698	4,097,408,559
Revenue @ Capped Rate			$306,046,698	$244,837,358	$195,869,887	$156,695,909	$125,356,728	$100,285,382
Revenue Requirement	$358,581,380	$320,578,000	$306,046,698	$280,032,729	$256,229,947	$234,450,401	$214,522,117	$196,287,737

Average Aggregate Rate	0.024475319

This is the NECA composite rate for '08/09; see Note 7. You may enter any value in cell C21 causing all Estimated Revenue and Supplemental ICLS Estimates to be recalculated.

Estimate of Supplemental ICLS Required

Description	2008/2009	2009/2010	2010/2011	2011/2012	2012/2013	2013/2014
SCENARIO A						
NECA Pool	$0	$22,953,502	$43,037,817	$60,554,208	$75,773,456	$88,938,913
Other Rate-of-Return Companies	$0	$17,215,127	$32,278,363	$45,415,656	$56,830,092	$66,704,185
Total	$0	$40,168,629	$75,316,180	$105,969,865	$132,603,549	$155,643,098
SCENARIO B						
NECA Pool	$0	$38,255,837	$69,816,903	$95,711,323	$116,812,406	$133,861,882
Other Rate-of-Return Companies	$0	$28,691,878	$52,362,677	$71,783,492	$87,609,304	$100,396,411
Total	$0	$66,947,715	$122,179,580	$167,494,815	$204,421,710	$234,258,293
SCENARIO C					$85	
NECA Pool	$0	$35,195,370	$60,360,060	$77,754,492	$89,165,390	$96,002,355
Other Rate-of-Return Companies	$0	$26,396,528	$45,270,045	$58,315,869	$66,874,042	$72,001,766
Total	$0	$61,591,898	$105,630,105	$136,070,361	$156,039,432	$168,004,122

NOTES:

Minutes of Use (MOUs)

Note 1: 2006 Actual of 17,063,479,995 is from the 2007/2008 NECA TRP filing Excel File; sheet 'DMD-1 page 3' Local Switching Total Chargeable (cell G31)

Note 2: 2007 Actual of 15,125,497,727 is from the 2008/2009 NECA TRP filing Excel File; sheet 'DMD-1 page 3' Local Switching Total Chargeable (cell G31)

Note 3: 2008/2009 Baseline of 12,504,298,580 is from the 2008/2009 NECA TRP filing Excel File; sheet 'DMD-1 page 3' Local Switching Total (cell C34)

Estimated Switched Access Revenue Requirement for NECA Pool

Note 4: 2006 Actual of $358,581,380 is the sum of the following Revenue Requirement items from the 2007/2008 NECA TRP filing Excel File
- Local Switching w/o Local Switching Support (cell N15 minus cell D15) on sheet 'ACR1-(H)'
- Information (cell N17) on sheet 'ACR1-(H)'
- Transport (cell N19) on sheet 'ACR1-(H)'

Note 5: 2007 Actual of $320,578,000 is the sum of the following Revenue Requirement items from the 2008/2009 NECA TRP filing Excel File
- Local Switching w/o Local Switching Support (cell N15 minus cell C15) on sheet 'ACR1-(H)'
- Information (cell N17) on sheet 'ACR1-(H)'
- Transport (cell N19) on sheet 'ACR1-(H)'

Note 6: 2008/2009 - Baseline of 306,046,698 is the sum of the following Revenue Requrement items from the 2008/2009 NECA TRP filing Excel File:
- Information Total (cell Q29) on sheet 'REV-1 Page 1
- Local Switching - Total w/o Local Switching Support (cell Q35) on sheet 'REV-1 Page 1
- Local Transport Total (cell Q27) on sheet 'REV-1 Page 2

Note 7: Average Aggregate Rate : 2008/2009 Average Aggregate Rate is calculated by dividing 08/09 NECA filed Access Revenue Requirement by the 08/09 NECA filed MOUs. Individual rate elements will vary by carrier

Note 8: Proportional MOUs for NECA and other Rate-of-Return companies developed using data from the Federal Communication Commission, Trends in Telephone Service, February 2007, Table 1.4 and from the March 2008 MOU Report filed by NECA with the FCC, available at http://www.necainfo.org

Note 9: **Forecast Scenario A - Slower decline. Due to the lack of data, the same rates of decline were assumed for each consecutive year.** Annual decline in MOUs (10%); Annual decline in cost (2.5%)

Note 10: **Forecast Scenario B - moderate decline. Due to the lack of data, the same rates of decline were assumed for each consecutive year.** Annual decline in MOUs (15%); Annual decline in cost (2.5%)

Note 11: **Forecast Scenario C - Faster decline. Due to the lack of data, the same rates of decline were assumed for each consecutive year.** Annual decline in MOUs (20%); Annual decline in cost (8.5%)

Note 12: The revenue requirement per minute for non-NECA Rate-of-Return companies was assumed to be the same as for NECA pool companies

Reasonable and Responsible ICC Reform

Great Plains Communications, Inc.
Consolidated Companies

Ken Pfister, Great Plains, Blair, NE
Wendy Thompson Fast,
Consolidated Companies, Lincoln, NE
Cheryl Parrino, PSCG
Daniel Mitchell, NTCA

Responsible Reform of ICC is Possible

- The FCC has an opportunity to take a step toward ICC reform while addressing the CORE remand responsibly
- Principles for responsible ICC reform:
  - Maintain integrity of communications law
  - Avoid unlawful rate regulation
  - Provide predictable and lawful regulation
- Proposals for a mandatory “$0.0007” regulated rate have none of these principles
- Proposals for a mandatory “$0.0007” regulated rate imperil rural telephone companies

Maintain the Integrity of Communications Law

- Communications law governs ICC; don't reinvent law
- Most states follow federal communications law
- Our companies and our state have done the right things:
  - State benchmark rates
  - Lowered intrastate access rates
  - Targets support to low density areas and only provides support if the company is not earning its authorized return
- Having taken all these steps, moving to a mandatory \$.0007 rate would be expensive and risky

Avoid Unlawful Rate Regulation

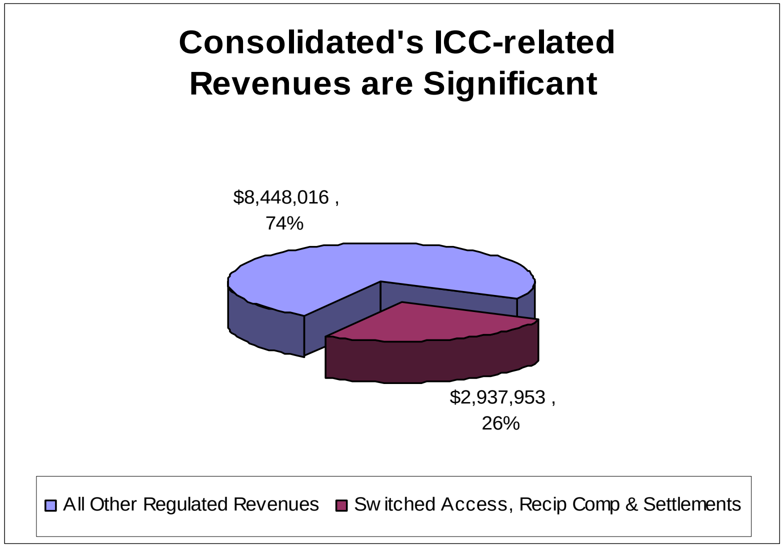
- As the Core Remand and AT&T v. IUB Supreme Court decision illustrate, the courts will not permit the FCC to exceed its rate regulatory authority. 525 U.S. 366 (1999)
- No legislation or case precedent provide the FCC with the legal basis to set intrastate rates at $0.0007
- One-size-fits-all federal rate regulation does not work
- States and companies will litigate, and the FCC will ultimately lose
- In the meantime, broadband investment will cease and consumers will suffer

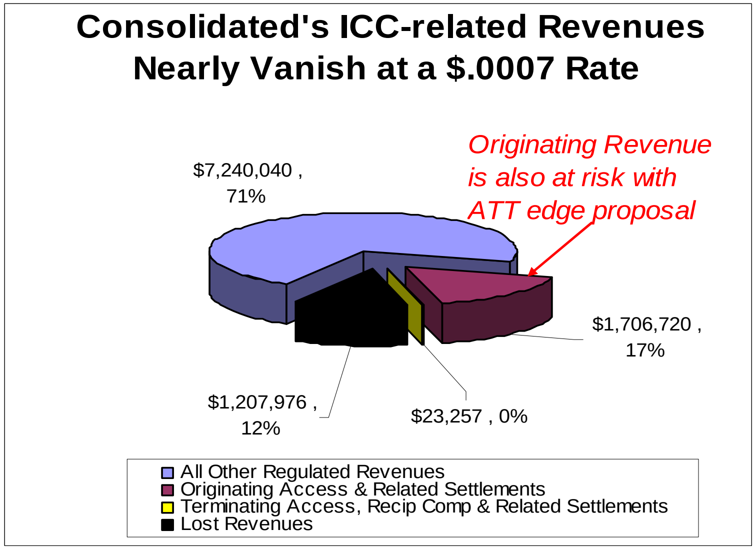
Provide Predictable and Lawful Regulation

- Implementing a mandatory $.0007 terminating rate for all carriers and all services:
  - Would harm rural customers and their carriers, absent replacement revenue
  - Would subsidize carriers that use rural networks, but do not invest in rural infrastructure
  - Would halt further broadband investment in rural areas
  - Would be an exaggerated remedy for problems associated with arbitrage

The Real Impact of $.0007

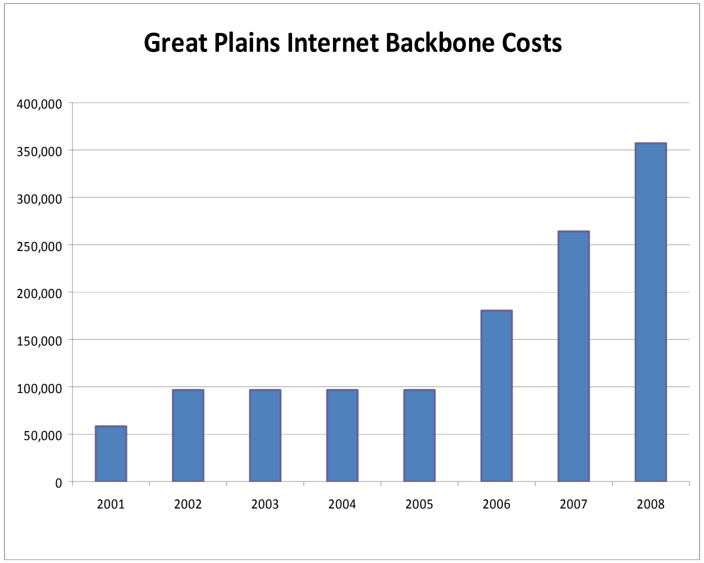
- For rural carriers, the terminating revenue received is less than the billing cost
- Great Plains' TELRIC rate is nearly 30 times higher than $.0007
- Revenue replacement is $4.3 billion per AT&T
- Without revenue replacement, carriers will stop investing in broadband infrastructure

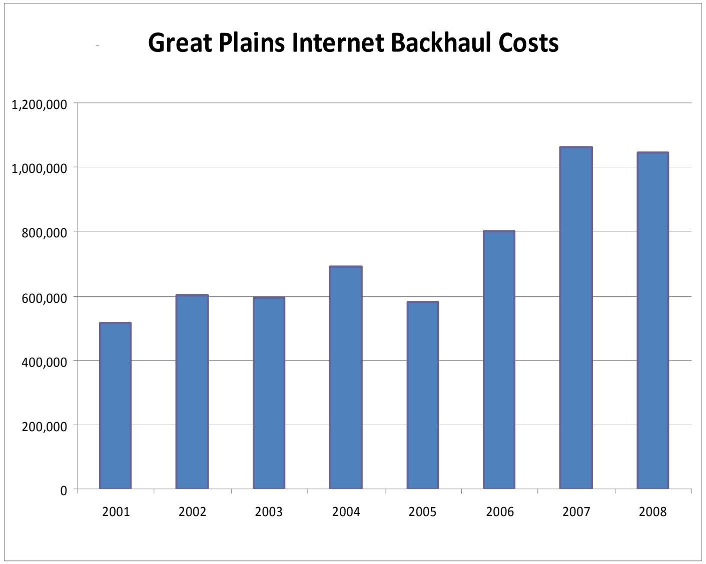




The Real Impact of $.0007

- The proposal is putting traditional revenue streams at risk while unregulated middle mile and backbone costs are increasing dramatically
- Broadband deployment will halt





Dealing Responsibly with the CORE Remand

- The FCC should deal directly and narrowly with the court remand
  - The FCC should reconsider its position and conclude that the Interim ISP-bound Rules are not sustainable because
    - ISP-bound traffic is subject to 251(b)(5), and;
    - the FCC's authority is limited to establishing pricing methodologies and does not allow for rate setting according to IUB v. FCC, 219 F.3d 744 (8th Cir. 2000)
  - The U.S. Supreme Court has determined that the FCC does not have jurisdiction to set or telegraph prices for reciprocal compensation. AT&T Corp., et al. v. IUB, et al., 525 U.S. 366 (1999)

Reforming ICC Responsibly

- As an interim step, *cap interstate ROR access rates* and recover the residual in ICLS
  - Stops the problem from getting worse, while the larger reform issues can be resolved
  - The price tag is much smaller --$300 million vs. $4.3 billion
- Open a docket to address separations reform
  - Recognize the changing nature of communications and the expiration of the separations freeze, these changes are timely
  - Legally unify access rates on a carrier-by-carrier basis after reallocating costs to the interstate jurisdiction

Recommendations

- Don’t blindly embrace one-size-fits-all federal rate regulation
- Read such proposals carefully
- Adopt only clearly legal ICC reform
- Consider effects on rural consumers and the carriers that serve them
- Consider responsible rural ICC proposal